

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 480 of 1986****For Approval and Signature:****HONOURABLE MR.JUSTICE KS JHAVERI :**

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1 Whether Reporters of Local Papers may
be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the
fair copy of the judgment ?

Whether this case involves a
substantial question of law as to the
4 interpretation of the constitution of
India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the
civil judge ?

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STATE OF GUJARAT - Appellant(s)**Versus****ASHOK SWEET MART & 3 - Opponent(s)**

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Appearance :

MR HL JANI APP for Appellant(s) : 1,

MS NITA C BANKER for Opponent(s) : 1,

MR ND BUCH for MR ND NANAVATI for Opponent(s) : 2 - 3.

NOTICE SERVED for Opponent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI**Date : 29/11/2007****ORAL JUDGMENT**

1. This appeal is directed against the judgment and

order dated 19.09.1985 passed by the learned Judicial Magistrate, First Class, Junagadh in Criminal Case No.4263/1984 whereby, the complaint was dismissed and the respondents-accused were acquitted of the charges levelled against them.

2. The brief facts of the prosecution case are as under;

2.1 The original complainant Shri K.J. Pandya was working as a Food Inspector at the relevant time, visited the shop of the respondents-accused in the name and style of Ashok Sweet Mart on 01.08.1984. After issuing the statutory notice for collecting the samples for sending it for analysis, he collected samples of Chana upon payment of Rs.4.20 and the said sample was sent for Public Analyst. The Public Analyst report suggests that the sample of Chana was adulterated. The Public Analyst Report is produced at Exh.25. The entire record along with public analysis report were placed before the concerned Public Health Authority for obtaining proper sanction for instituting the prosecution against the present respondents. After due application of mind, Local Health Authority accorded its sanction for lodging prosecution against the respondents. The sanction is produced at Ex. 27. After instituting the complaint, the

notice as envisaged under Section 13 (2) was issued by the Local Health Authority to the respondents.

2.2 As the accused denied the charges, the matter proceeded further. The Learned Magistrate has examined the complainant at length and recorded the deposition at Ex.15. The panch Shri Bharatkumar Mohanlal has also been examined and his evidence is recorded at Exh.37 and has also relied upon several documentary evidence.

2.3 At the end of trial, the learned Magistrate acquitted the respondents of the charges levelled against him. Hence, this appeal.

3. Learned Additional Public Prosecutor, Mr.Jani for the appellant has contended that the trial court has committed an error in not believing the prosecution witnesses and has wrongly acquitted the accused of the charges levelled against him. He has also contended that the trial court ought to have believed the version of the prosecution witnesses who were present at the relevant point of time.

4. Heard learned counsel for the respective parties and perused the entire documents on record. The principles which would govern and regulate the hearing of appeal by this Court against an order of acquittal passed by the trial Court have been very succinctly explained by the Apex Court in a catena

of decisions. This Court has the power to re-consider the whole issue involved in the appeal, re-appraise the evidence and come to its own conclusion and findings in place of the findings recorded by the trial Court, if the said findings are against the weight of the evidence on record or, in other words, perverse.

5. In a recent decision of the Apex Court in the case of ***State of Goa v. Sanjay Thakran & anr. reported in (2007) 3 S.C.C. 755***, the Court has reiterated the powers of this Court in such cases. In Para-16 of the said decision, the Court has observed as under ;

"16. From the aforesaid decisions, it is apparent that while exercising the powers in appeal against the order of acquittal the Court of appeal would not ordinarily interfere with the order of acquittal unless the approach of the lower Court is vitiated by some manifest illegality and the conclusion arrived at would not be arrived at by any reasonable person and, therefore, the decision is to be characterized as perverse. Merely because two views are possible, the Court of appeal would not take the view which would upset the judgment delivered by the Court below. However, the appellate Court has a power to review the evidence if it is of the view that the conclusion arrived at by the Court below is perverse and the Court has committed a manifest error of law and ignored the material evidence on record. A duty is cast upon the appellate Court, in such circumstances, to re-appreciate the evidence to arrive to a just decision on the basis of material placed on record to

find out whether any of the accused is connected with the commission of the crime he is charged with".

[Emphasis supplied]

6. Similar principle has been reiterated by the Hon'ble Apex Court in two recent decisions in the cases of ***State of Uttar Pradesh v. Ram Veer Singh & ors.*** reported in ***2007 A.I.R. S.C.W. 5553*** and in ***Girja Prasad (Dead) by L.Rs. v. State of M.P.*** reported in ***2007 A.I.R. S.C.W. 5589***. Thus, the powers which this Court may exercise against an order of acquittal are well settled.
7. After considering the entire oral as well as documentary evidence on record, the trial Court has come to a finding that there are contradictions in the deposition of the complainant as well as the pancha witness and the prosecution has failed to produce certificate required u/s. 8 of the Act. In paragraph no.12 of the impugned judgment and order, it has been observed that notice, Exh.29 has not been issued to all respondents, but issued to the respondent-accused no.2 only, which was found to main defect on the part of the prosecution. It has been observed in paragraph no.17 of the impugned judgment and order that Rule 4(3) has been

violated. Looking to the aforestated facts, the trial Court came to the conclusion that the prosecution had not established its case, and, therefore, the accused have been acquitted.

8. In above view of the matter, I am of the opinion that the trial Court was completely justified in acquitting the respondents of the charges levelled against him. In my view, the findings recorded by the trial Court are absolutely just and proper and in recording the said findings, no illegality or infirmity has been committed by it. I am in complete agreement with the findings, ultimate conclusion and the resultant order of acquittal recorded by the trial Court and, hence, find no reasons to interfere with the same.

9. It is also required to be noted that in the case of State of Maharashtra V/s. M/s Gopalprasad Govindprasad Agarwal, reported in AIR 1999 SC 1507, having regard to the fact that the offences were committed almost 20 years ago, the Apex Court refrained from setting aside the acquittal order. In the present case the incident is of 1st August, 1984 and almost 23 years have elapsed. Therefore, even on this ground, I am of the view that it is not desirable to interfere with the findings of the

trial court.

10. I am not discussing the evidence of each witness/s in detail in view of the observations made by the Apex Court in the case of ***State of Karnataka Vs. Hemareddy*** reported in ***A.I.R. 1981 S.C. 1417*** wherein it is held as under:

"... This court has observed in *Girija Nandini Devi V. Bigendra Nandini Chaudhary* (1967)1 SCR 93: (AIR 1967 SC 1124) that it is not the duty of the appellate court when it agrees with the view of the trial court on the evidence to repeat the narration of the evidence or to reiterate the reasons given by the trial court expression of general agreement with the reasons given by the Court the decision of which is under appeal, will ordinarily suffice."

11. In the result, the appeal is dismissed.

S/d-
(***K.S. JHAVERI, J.***)

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